

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND (BALTIMORE DIVISION)**

THE CIT GROUP/EQUIPMENT FINANCING, INC., *

PLAINTIFF, *

V. *

CASE No. 1:02-CV-02069

PAUL J. VIGNOLA ELECTRIC CO., INC., et al., *

DEFENDANTS. *

* * * * *

**ORDER STRIKING DEFENDANTS' AFFIDAVIT IN OPPOSITION TO
THE MOTION OF THE CIT GROUP/EQUIPMENT FINANCING, INC.
FOR SUMMARY JUDGMENT, AND PRECLUDING DEFENDANTS FROM PROVIDING
TESTIMONY OR OTHER PROOF AT TRIAL OR OTHER EVIDENTIARY PROCEEDINGS**

Upon consideration of the Motion of The CIT Group/Equipment Financing, Inc. to Strike Defendants' Affidavit in Opposition to Motion for Summary Judgment and to Preclude Defendants from Providing Testimony or Other Proof at Trial or Other Evidentiary Proceedings (the "Motion"), and any response thereto, the relief requested appearing appropriate under the circumstances, the Court hereby

FINDS that Defendants Paul J. Vignola Electric Company, Inc. and Joann Vignola (collectively, the “Defendants”) refused to provide written and documentary discovery to The CIT Group/Equipment Financing, Inc. (“CIT”) despite CIT’s timely attempt to obtain such discovery prior to the expiration of discovery in this case; and further

FINDS that the Defendants prevented CIT from conducting meaningful discovery of the facts and matters that may gave rise to this case; and further

FINDS that the Defendants would benefit unfairly, and CIT would suffer severe, extreme and irreparable harm if the Defendants' affidavit is considered in opposition to CIT's motion for summary judgment because the affidavit was submitted only after the Defendants frustrated all of

CIT's other attempts to obtain proper discovery, including discovery of the matters set forth in the affidavit at issue; and further

FINDS that the Defendants' failures to provide discovery responses are without justification or excuse; and further

FINDS that the Defendants' refusal to cooperate with CIT's attempts to take discovery and refusal to discharge their responsibilities under applicable law has prejudiced CIT by preventing it from obtaining information it is entitled to review in preparing its defense to the Defendants' claims in this action; and further

FINDS that CIT would suffer extreme and irreparable injury if the Defendants are permitted to offer evidence in support of their claims at trial or other evidentiary proceedings under circumstances such as these, where the Defendants refused to provide any meaningful discovery whatsoever; and further

FINDS that the Defendants' failure to cooperate with CIT's attempts to take discovery has prejudiced CIT by forcing it to seek the relief set forth in this Order.

Accordingly, it is this ____ day of _____, 2003, hereby:

1. ORDERED, that the Motion be, and the same hereby is, GRANTED; and it is further

2. ORDERED, that the Defendants' affidavit in opposition to CIT's motion for summary judgment be, and the same hereby is, STRICKEN from the record of this case; and it is further

3. ORDERED, that the Defendants shall not be permitted to testify at trial or in any other evidentiary proceeding conducted in this matter, nor shall the Defendants be permitted to offer evidence in support of their claims; and it is further

4. ORDERED, that the Defendants and their attorneys shall reimburse CIT for its costs and expenses, including reasonable attorneys' fees, incurred in preparing and prosecuting the Motion. The obligation to reimburse CIT as described herein shall be joint and several as to the Defendants and their attorneys. The amount to be paid CIT shall be determined by an application for award supported by affidavit, to which application the Defendants and counsel may reply within 10 days of service of that application upon them.

**JUDGE, UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

cc:

Steven N. Leites, Esq.
Andrew L. Cole, Esq.
Leites, Leites & Friedberg, P.C.
25 Hooks Lane, Suite 302
Baltimore, MD 21208

Robert J. Kim, Esq.
Mark Schweitzer, Esq.
McNamee, Hosea, Jernigan, Kim,
Greenan & Walker, P.A.
6411 Ivy Lane, Suite 200
Greenbelt, MD 20770